



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Ms. Mary E. Reveles
Assistant County Attorney
County of Fort Bend
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2003-7559

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189847.

Fort Bend County (the "county") received several requests from the same requestor for five categories of information related to a named individual. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date

the governmental body received the request for information, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the county must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). A governmental body may also establish that litigation is reasonably anticipated by the receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990).

In this instance, you inform us that the underlying matter involves a pending employee grievance proceeding that the requestor has instituted against the county under section 554.006 of the Government Code for wrongful and retaliatory termination of the requestor's client. Section 554.006 provides, in relevant part, that an aggrieved party must initiate action under the grievance or appeal procedures of the employing state or local governmental entity before filing suit. *See* Gov't Code § 554.006(a). However, after reviewing your arguments and the submitted information, we conclude that you have not provided this office with any evidence that the county had any concrete basis to reasonably anticipate a lawsuit when it received the request for information. *See* Gov't Code § 552.103(c); Open Records Decision Nos. 518 at 5 (1989) (governmental body must furnish evidence that litigation involving specific matter is realistically contemplated and more than mere conjecture), 452 at 4 (1986) (section 552.103 requires concrete evidence showing that claim that litigation may ensue is more than mere conjecture), 331 at 1-2 (1982) (mere chance of litigation not sufficient to trigger section 552.103). Therefore, as you have failed to demonstrate that litigation was pending or reasonably anticipated on the date of the county's receipt of the request for information, the county may not withhold any of the submitted information under section 552.103.

However, the submitted documents contain the requestor's client's W-4 form. A W-4 form is confidential under section 6103(a) of title 26 of the United States Code.¹ Therefore, the county must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with federal law.²

We also note that social security numbers must be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the county should ensure that no such information was obtained or is maintained by the county pursuant to any provision of law enacted on or after October 1, 1990.

Additionally, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, if the submitted driver's license was issued by an agency of this state, the county must withhold the section 552.130 information we have marked.

Finally, we note that under section 552.023 of the Government Code a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to his client's social security and section 552.130 information, and it must be released in this instance.

In summary, we conclude that: 1) the county must withhold the submitted W-4 form under federal law; 2) except for the requestor's client's information, the submitted social security numbers may be confidential under federal law; and 3) if the submitted driver's license was

¹We note that return information of any taxpayer may be disclosed to any person that the taxpayer designates. *See* 26 U.S.C. § 6103(c).

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

issued by an agency of this state, the county must withhold the section 552.130 information we have marked. All remaining submitted information must be released.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

³We note that some of the submitted information may be confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to information pertaining to his client. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the county receives a further request for this information from an individual other than this requestor or his client, the county should again seek our decision.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 189847

Enc: Submitted documents

c: Mr. Larry P. McDougal
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Richmond, Texas 77469
(w/o enclosures)